

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 BANK OF AMERICA, N.A.,

4 Plaintiff

5 v.

6 TIARA SUMMIT HOMEOWNERS  
ASSOCIATION, et al.,

7 Defendants  
8

Case No.: 2:16-cv-00611-APG-EJY

**Order Granting Motion for Default  
Judgment**

[ECF No. 101]

9 Cross-claimant SFR Investments Pool 1, LLC (SFR) moves for default judgment against  
10 cross-defendant Michelle Ong. ECF No. 101. Obtaining a default judgment under Federal Rule  
11 of Civil Procedure 55 is a two-step process. *See Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir.  
12 1986). First, “[w]hen a party against whom a judgment for affirmative relief is sought has failed  
13 to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must  
14 enter the party’s default.” Fed. R. Civ. P. 55(a). After default is entered, a party may seek entry  
15 of default judgment under Rule 55(b).

16 Upon entry of default, I take as true the factual allegations in the non-defaulting party’s  
17 complaint, except those related to the amount of damages. Fed. R. Civ. P. 8(b)(6); *TeleVideo*  
18 *Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). Nonetheless, “[e]ntry of default  
19 does not entitle the non-defaulting party to a default judgment as a matter of right.” *Warner Bros.*  
20 *Entm’t Inc. v. Caridi*, 346 F. Supp. 2d 1068, 1071 (CD. Cal. 2004) (citation omitted). The  
21 “general rule [is] that default judgments are ordinarily disfavored. Cases should be decided upon  
22 their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472 (citing *Peno v. Seguros La*  
23

1 *Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985)). Whether to grant a default judgment lies  
 2 within my discretion. *Id.*

3 I consider the following factors in determining whether to grant a default judgment:  
 4 (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claims;  
 5 (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the  
 6 possibility of a dispute concerning material facts; (6) whether the default was due to excusable  
 7 neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring  
 8 decisions on the merits. *Eitel*, 782 F.2d at 1471-72.

9 The clerk of court entered default against Ong. ECF No. 96. Ong has not appeared in this  
 10 case. Thus, there is no procedural impediment to entering a default judgment.

11 The first *Eitel* factor considers whether SFR will suffer prejudice if a default judgment is  
 12 not entered. *See PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002);  
 13 *Next Gaming, LLC v. Glob. Gaming Grp., Inc.*, No. 214-CV-00071-MMD-CWH, 2016 WL  
 14 3750651, at \*3 (D. Nev. July 13, 2016). Because Ong is not participating in this case, if default  
 15 judgment is not entered, SFR will be unable to pursue its claim against her. This factor weighs  
 16 in favor of entry of default judgment.

17 The second and third *Eitel* factors examine whether the "plaintiff state[s] a claim on  
 18 which the plaintiff may recover." *Danning v. Lavine*, 572 F.2d 1386, 1389 (9th Cir. 1978); *see*  
 19 *also* Fed. R. Civ. P. 8. SFR's cross-complaint seeks a declaration that the HOA foreclosure sale  
 20 extinguished Ong's interest in the property. SFR alleges that it acquired the property by  
 21 successfully bidding for it at a properly conducted, publicly held HOA foreclosure sale. ECF No.  
 22 29 at 10-14. I must accept these allegations as true. Fed. R. Civ. P. 8(b)(6); *TeleVideo*, 826 F.2d  
 23 at 917-18. At the time of this foreclosure sale, a properly conducted HOA foreclosure sale

1 extinguished the prior homeowners' interest and vested title in the purchaser "without equity or  
2 right of redemption." Nev. Rev. Stat. § 116.31166 (2012). Thus, the second and third *Eitel*  
3 factors weigh in favor of the entry of a default judgment declaring that Ong's interest in the  
4 property has been extinguished.

5 In assessing the fourth *Eitel* factor, I consider "the amount of money requested in relation  
6 to the seriousness of the defendant's conduct, whether large sums of money are involved, and  
7 whether 'the recovery sought is proportional to the harm caused by [the] defendant's conduct.'" *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1212 (W.D. Wash. 2014) (quoting  
8 *Landstar Ranger, Inc. v. Earth Enters., Inc.*, 725 F. Supp. 2d 916, 921 (N.D. Cal. 2010));  
9 *PepsiCo.*, 238 F. Supp. 2d at 1176. SFR's request for a declaration that Ong's interest in the  
10 property is extinguished is proportional to the effect of a properly conducted HOA foreclosure  
11 sale. SFR does not seek any monetary relief against Ong. Thus, the fourth *Eitel* factor is  
12 satisfied as to the declaratory relief requested.  
13

14 The fifth *Eitel* factor weighs the possibility of a dispute regarding material facts in the  
15 case. *PepsiCo.*, 238 F. Supp. 2d at 1177. Ong's failure to respond suggests there are no disputed  
16 material facts. Thus, the fifth *Eitel* factor weighs in favor of entry of default judgment.

17 The sixth *Eitel* factor considers whether Ong's default is due to excusable neglect.  
18 *PepsiCo.*, 238 F. Supp. 2d at 1177. SFR served Ong in March 2020. ECF No. 49. The clerk of  
19 court entered default against Ong in May 2016 and she still has not appeared. ECF No. 96.  
20 There is no evidence before me that the failure to respond is due to excusable neglect. *See United*  
21 *States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (per curiam) (holding that  
22 it was "perfectly appropriate" for the district court to enter default judgment against a  
23 corporation that failed to appear in the action). Given the time period during which Ong had

1 notice of this case yet failed to appear, it is unlikely that she failed to respond due to excusable  
2 neglect. Thus, the sixth *Eitel* factor weighs in favor of entry of default judgment.

3 Finally, the seventh *Eitel* factor takes into account the policy favoring a decision on the  
4 merits. “Cases should be decided on their merits whenever reasonably possible.” *Eitel*, 782 F.2d  
5 at 1472. But Ong’s failure to respond to the complaint “makes a decision on the merits  
6 impractical, if not impossible.” *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177. Thus, while this final  
7 *Eitel* factor always weighs against an entry of default judgment, it does not preclude me from  
8 entering a default judgment. A decision on the merits is desirable, but under these  
9 circumstances, default judgment is warranted.

10 I THEREFORE ORDER that the cross-claimant SFR Investments Pool 1, LLC’s motion  
11 for default judgment against cross-defendant Michelle Ong (**ECF No. 101**) is **GRANTED**. The  
12 clerk of court is instructed to enter judgment in favor of SFR Investments Pool 1, LLC and  
13 against Michelle Ong as follows: It is hereby declared that the homeowners association’s non-  
14 judicial foreclosure sale conducted on December 5, 2012 extinguished any interest Michelle Ong  
15 had in the property located at 10037 Barengo Avenue in Las Vegas, Nevada.

16 I FURTHER ORDER the clerk of the court to close this case.

17 DATED this 22nd day of January, 2021.

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20 ANDREW P. GORDON  
21 UNITED STATES DISTRICT JUDGE  
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